

AMENDED IN SENATE AUGUST 28, 2006
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AMENDED IN ASSEMBLY APRIL 13, 2005
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1231

**Introduced by Assembly Member Jerome Horton
(Coauthors: Assembly Members Koretz and Lieu)**

February 22, 2005

An act to amend Sections, 40824, 40825, 42352, and 42359.5 of, and to add Sections ~~40005, 40822.5, 40866, 42350.3, 42350.7, 42360.5, 42364.5, 42450.5~~ 40822.5, 40866, 42350.3, 42360.5, and 42455 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1231, as amended, Jerome Horton. Air pollution.

(1) Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control districts and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources.

Existing law establishes one or more hearing boards in each district for the purposes of performing specified functions, including, but not limited to, issuing orders of abatement and issuing, extending, renewing, and reissuing variances from specified provisions of law relating to excess emissions by stationary sources and the products of stationary sources. Existing law specifically establishes notice requirements for a hearing to consider an application for an interim variance, a 90-day variance, or other variance, including a requirement that the hearing board, with respect to a variance other than an interim or 90-day variance, publish the notice and send the notice to every person who requests the notice, not less than 30 days prior to the hearing. Existing law specifically exempts emergency, interim, and 90-day variances from that requirement for publication and sending notice requirement. Existing law provides that the terms of the members of a hearing board are three years, and sets forth the procedure a hearing board is required to take with respect to hearings conducted by the hearing board.

This bill, except as specified, would require all pleadings to be discussed before the hearing board to be filed with the clerk of the district board and to be available to the public at least ~~48~~ 24 hours before the date of the hearing.

~~The bill, except as specified, would delete that exemption from sending notice for emergency, 90-day, and interim variances and would require a hearing board, for a 90-day variance or interim variance, to send notice to every person who requests the notice at least 10 days prior to the hearing by electronic mail at least 72 hours before the hearing, and for an emergency variance notice no more than 30 days after an application for the emergency variance, as specified. The bill would require, with respect to a hearing regarding the issuance of an order for abatement, that notice of that hearing be sent to every person who requests the notice at least 10 days prior to the hearing, as specified.~~

(2) Existing law provides for variances from specified provisions of law relating to excess emissions by stationary sources and products of stationary sources, including interim and emergency variances in specified circumstances. Existing law requires written findings to be made by the hearing board before granting any variance, and sets forth procedures for the revocation or modification of any variance. Existing law specifies criminal and civil penalties for violations of laws relating to excess emissions from stationary sources of air

pollution and products from stationary sources, and permits a hearing board to issue an order of abatement if it finds that any person is in violation of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.

This bill would require the air districts, on or before December 31, 2007, and biennially thereafter, to submit reports relating to the number and length of variances and orders of abatement and the total volume of excess emissions allowed to the State Air Resources Board, which would in turn be required, on or before March 31, 2008, and biennially thereafter, to publish the reports on its Internet Web site. The bill would also require the state board to notify the Legislature of the existence of the reports and to provide the Legislature with the specific location (Uniform Resource Locator (URL) or Internet Protocol (IP) address) where the information can be accessed, viewed, downloaded, or otherwise obtained.

The bill would require any person who submits an application for a variance to include in that application an estimate of the type and amount of excess emissions that would result from the granting of the variance.

The bill, *except as specified*, would require the district board, at *least once every other month, or at each scheduled public meeting of that the board, if the latter is less frequent*, to disclose specified information relating to the granting of variances and the issuance of orders for abatement. ~~The bill would require the district board to adopt, and an applicant to pay, a fee for the district board's costs in complying with those requirements.~~

Because this bill would impose certain requirements on local districts, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 40005 is added to the Health and Safety~~
2 ~~Code, to read:~~

3 ~~40005. When a provision of this part or Part 4 (commencing~~
4 ~~with Section 41500) requires notice of a public hearing to be~~
5 ~~given pursuant to this section, the notice shall be mailed or~~
6 ~~delivered at least 10 days prior to the hearing to any person who~~
7 ~~has filed a written request for notice with either the district clerk~~
8 ~~or with any person designated by the district board to receive~~
9 ~~these requests. The district may charge a fee that is reasonably~~
10 ~~related to the costs of providing this service, and the district may~~
11 ~~require each request to be annually renewed.~~

12 ~~SEC. 2.~~

13 ~~SECTION 1.~~ Section 40822.5 is added to the Health and
14 Safety Code, to read:

15 ~~40822.5. All~~ Except for an application for an emergency
16 variance, all pleadings to be discussed before the hearing board
17 shall be filed with the clerk of the district board and shall be
18 available to the public at least ~~48~~ 24 hours before the date of the
19 hearing.

20 ~~SEC. 3.~~

21 ~~SEC. 2.~~ Section 40824 of the Health and Safety Code is
22 amended to read:

23 40824. In case of a hearing to consider an application for an
24 interim variance, as authorized under Section 42351:

25 (a) The hearing board shall serve reasonable notice of the time
26 and place of the hearing upon the district air pollution control
27 officer and upon the applicant.

28 (b) The hearing board shall send the notice to every person
29 who requests the notice ~~pursuant to Section 40005~~ by electronic
30 mail at least 72 hours before the hearing.

31 (c) Subdivision (b) of Section 49823 shall not apply.

32 ~~(e)~~

33 (d) In districts with a population of less than 750,000, the
34 chairperson of the hearing board, or any other member of the
35 hearing board designated by the board, may hear an application
36 for an interim variance. If any member of the public contests a
37 decision made by a single member of the hearing board, the

1 application shall be reheard by the full hearing board within 10
2 days of the decision.

3 ~~SEC. 4.~~

4 *SEC. 3.* Section 40825 of the Health and Safety Code is
5 amended to read:

6 40825. In case of a hearing to consider an application for a
7 variance, or a series of variances, to be in effect for a period of
8 not more than 90 days, or an application for modification of a
9 schedule of increments of progress:

10 (a) The hearing board shall serve a notice of the time and place
11 of a hearing to grant such a variance or modification upon the air
12 pollution control officer, all other districts within the air basin,
13 the state board, the Environmental Protection Agency, and upon
14 the applicant or permittee, not less than 10 days ~~prior to such~~
15 *before that hearing.*

16 (b) The hearing board shall send the notice to every person who
17 requests the notice ~~pursuant to Section 40005.~~ *by electronic mail*
18 *at least 72 hours before the hearing.*

19 (c) *Subdivision (b) of Section 49823 shall not apply.*

20 (e)

21 (d) In districts with a population of less than 750,000, the
22 chairman of the hearing board, or any other member of the
23 hearing board designated by the board, may hear such an
24 application. If any member of the public contests a decision made
25 by a single member of the hearing board, the application shall be
26 reheard by the full hearing board within 10 days of the decision.

27 ~~SEC. 5.~~

28 *SEC. 4.* Section 40866 is added to the Health and Safety
29 Code, to read:

30 40866. (a) Each district shall, on or before December 31,
31 2007, and biennially thereafter, submit to the state board, in a
32 format identified by the state board, the following information:

33 (1) The number of variances requested and granted by the
34 district.

35 (2) The shortest, longest, and average length of variances
36 granted by the district.

37 (3) The number of orders of abatement issued by the district.

38 (4) The shortest, longest, and average length of orders of
39 abatement issued by the district.

1 (5) The total volume of excess emissions allowed by the
2 granting of variances and whether the excess emissions allowed
3 are inconsistent with the state implementation plan.

4 (b) The state board shall, on or before March 31, 2008, and
5 biennially thereafter, compile and publish the district reports
6 required by subdivision (a) on its Internet Web site. The state
7 board shall notify the Legislature that the reports are published
8 and provide the Legislature with the specific location (Uniform
9 Resource Locator (URL) or Internet Protocol (IP) address) where
10 the information can be accessed, viewed, downloaded, or
11 otherwise obtained.

12 ~~SEC. 6.~~

13 *SEC. 5.* Section 42350.3 is added to the Health and Safety
14 Code, to read:

15 42350.3. Any person who submits an application for a
16 variance shall include in that application an estimate of the type
17 and amount of excess emissions that would result from the
18 granting of the variance.

19 ~~SEC. 7. Section 42350.7 is added to the Health and Safety~~
20 ~~Code, to read:~~

21 ~~42350.7. Any document prepared in connection with an~~
22 ~~application for the issuance of an emergency variance pursuant to~~
23 ~~Section 42359.5 shall be filed with the clerk of the district board~~
24 ~~and shall be made available to the public at the time of filing.~~

25 ~~SEC. 8.~~

26 *SEC. 6.* Section 42352 of the Health and Safety Code is
27 amended to read:

28 42352. (a) No variance shall be granted unless the hearing
29 board makes all of the following findings:

30 (1) That the petitioner for a variance is, or will be, in violation
31 of Section 41701 or of any rule, regulation, or order of the
32 district.

33 (2) That, due to conditions beyond the reasonable control of
34 the petitioner, requiring compliance would result in either (A) an
35 arbitrary or unreasonable taking of property, or (B) the practical
36 closing and elimination of a lawful business. In making those
37 findings where the petitioner is a public agency, the hearing
38 board shall consider whether or not requiring immediate
39 compliance would impose an unreasonable burden upon an
40 essential public service. For purposes of this paragraph,

1 “essential public service” means a prison, detention facility,
2 police or firefighting facility, school, health care facility, landfill
3 gas control or processing facility, sewage treatment works, or
4 water delivery operation, if owned and operated by a public
5 agency.

6 (3) That the closing or taking would be without a
7 corresponding benefit in reducing air contaminants.

8 (4) That the applicant for the variance has given consideration
9 to curtailing operations of the source in lieu of obtaining a
10 variance.

11 ~~(5) The total amount of excess emissions that will be allowed~~
12 ~~by the approval of the variance.~~

13 *(5) That the applicant for the variance has provided a*
14 *reasonable estimate of the type and amount of excess air*
15 *pollution emissions that would result from the granting of the*
16 *variance.*

17 (6) During the period the variance is in effect, that the
18 applicant will reduce excess emissions to the maximum extent
19 feasible.

20 (7) During the period the variance is in effect, that the
21 applicant will monitor or otherwise quantify emission levels from
22 the source, if requested to do so by the district, and report these
23 emission levels to the district pursuant to a schedule established
24 by the district.

25 (b) As used in this section, “public agency” means any state
26 agency, board, or commission, any county, city and county, city,
27 regional agency, public district, or other political subdivision.

28 ~~SEC. 9.~~

29 *SEC. 7.* Section 42359.5 of the Health and Safety Code is
30 amended to read:

31 42359.5. (a) Notwithstanding any other provision of this
32 article or of Article 2 (commencing with Section 40820) of
33 Chapter 8 of Part 3, the chairperson of a district hearing board, or
34 any other member of the hearing board designated by the
35 chairperson, may issue, without advance notice and hearing, an
36 emergency variance to an applicant.

37 (b) The hearing board shall send notice of the issuance of the
38 variance to every person who requests notice, as soon as
39 practicable, but not more than 30 days after an application for the
40 emergency variance.

(c) (1) An emergency variance may be issued for good cause, including, but not limited to, a breakdown condition. The district board, in consultation with its air pollution control officer and the hearing board, may adopt rules and regulations, not inconsistent with this subdivision, to further specify the conditions, and to what extent, an emergency variance may be granted.

(2) The emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of Section 40824 or 42351.

~~SEC. 10.~~

SEC. 8. Section 42360.5 is added to the Health and Safety Code, to read:

42360.5. ~~The district board, at each scheduled public meeting of that board, shall disclose all of the following:~~ *(a) Except as provided in subdivision (b), the district board, at least once every other month, or at each public meeting of the board, if the latter is less frequent, shall disclose all of the following, to the extent that information is available:*

(1) The name and address of a business granted a variance.

(2) The rule or regulation of the district at issue.

~~(3) The reason—~~ *A brief summary of the primary reason stated in the application for the variance.*

(4) The total amount of excess emissions *that were* allowed by the granting of a variance.

(5) The total dollar amount of any excess emissions fees collected or owed as a result of a variance.

(b) For variances issued pursuant to subdivision (c) of Section 40824, the district board may provide an annual disclosure of variances issued in lieu of the periodic disclosure required in subdivision (a), if the total emissions attributed to a variance are less than one-half ton, emissions of toxic air contaminants attributed to the variance are de minimis, and the annual disclosure includes all of the information required in subdivision (a).

~~SEC. 11. Section 42364.5 is added to the Health and Safety Code, to read:~~

~~42364.5. The district board shall adopt, and all applicants shall pay, a fee calculated by the district board to yield a sum not exceeding the estimated cost to the district board of complying with Sections 42360.5 and 42455.~~

1 ~~SEC. 12. Section 42450.5 is added to the Health and Safety~~
2 ~~Code, to read:~~

3 ~~42450.5. Notice of a hearing pursuant to this article shall also~~
4 ~~be sent to every person who requests the notice pursuant to~~
5 ~~Section 40005.~~

6 ~~SEC. 13.~~

7 ~~SEC. 9. Section 42455 is added to the Health and Safety~~
8 ~~Code, to read:~~

9 ~~42455. The district board, at each scheduled public meeting~~
10 ~~of that board—~~*(a) The district board, at least once every other*
11 ~~month, or at each public meeting of the board, if the latter is less~~
12 ~~frequent, shall disclose all of the following:~~

13 (1) The name and address of a business issued an order for
14 abatement.

15 (2) The rule or regulation of the district at issue.

16 (3) The reason for the order for abatement.

17 (4) The total amount of excess emissions ~~that will result~~
18 ~~during the order of abatement period, if known by the district.~~

19 (5) The total dollar amount of any penalties ~~imposed as a result~~
20 ~~of the issuance of an order for abatement, assessed by the district~~
21 ~~for the violation addressed by the order for abatement.~~

22 ~~(b) If, as of January 1, 2007, the district is already meeting the~~
23 ~~disclosure requirements of this section through a report prepared~~
24 ~~pursuant to district rule or practice, that report shall constitute~~
25 ~~compliance with this section and the district need only append its~~
26 ~~report to the disclosure required by this section.~~

27 ~~SEC. 14.~~

28 ~~SEC. 10. No reimbursement is required by this act pursuant to~~
29 ~~Section 6 of Article XIII B of the California Constitution because~~
30 ~~a local agency or school district has the authority to levy service~~
31 ~~charges, fees, or assessments sufficient to pay for the program or~~
32 ~~level of service mandated by this act, within the meaning of~~
33 ~~Section 17556 of the Government Code.~~